The report, which could influence the European Union's ongoing review of market structure, states ''limiting systemic risk must be prioritized.'' Accordingly, it proposes that all trading platforms should ''stress-test their technology and surveillance systems.'' It also called for ''an examination of the costs and benefits of high frequency trading on markets and its impact upon other market users. . . .'' Finally, the report calls for ''the regulation of firms that pursue high frequency trading strategies to ensure that they have robust systems and controls with ongoing regulatory reviews of the algorithms they use.''

While I stated many of these concerns last August 21 in a letter to Chair Schapiro, it has taken almost a year later—and in large part due to the May 6 flash crash—that these ideas have finally gone mainstream and people are talking about it in all the different areas of the news media. Although the task before us is daunting, as even tweaking the market's structure is rife with potential unintended consequences, the SEC must act to protect investors and restore market credibility in the coming months. Navigating these issues will be difficult, particularly with so many business models based, or even dependent, on the existing regulatory framework.

Another challenge comes in the form of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act which places a raft of new responsibilities, including 95 rulemakings and 22 studies, on the Securities and Exchange Commission. Nevertheless, the SEC must triage its responsibilities and work expeditiously to adopt much needed reforms in the market structure area. There can be no back burner when it comes to resolving a broken market structure. There can be no delay when long-term investors are losing confidence. The time for action is now.

The direction the Commission takes in its bid to fulfill its mission will say much about the type of country in which we live. As difficult as it might be, regulators must stand apart from the industries they regulate, listening and understanding industry's point of view, but doing so at arm's length and with a clear conviction that on balance, our capital markets exist for the greater good of all Americans.

This is a test of whether the Commission is just a ''regulator by consensus,'' which only moves forward when it finds solutions favored by large constituencies on Wall Street, or if it indeed exists to serve a broader mission and therefore will act decisively to ensure the markets perform their two primary functions of facilitating capital formation and serving the interests of long-term investors.

A consensus regulator may tinker here and there on the margins, adopt patches when the markets spring a leak, and reach for low-hanging fruit when Wall Street itself reaches a consensus about permissible changes. In these times, however, the Commission must be bold and move forward. The American people deserve no less.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

UNANIMOUS-CONSENT REQUEST H.R. 4994

Mr. DORGAN. Mr. President, earlier today we had some suggestion on the floor of the Senate about the Cobell case—that is the settlement of the Cobell case—the Federal court case Cobell, et al. v. Salazar. A negotiation ensued late last year with an agreement in December of last year that would settle at last—at long, long last—a 15-year litigation in Federal court dealing with American Indians and the mismanagement of their trust accounts—literally stealing and looting trust accounts over the years and, in addition to that, a substantial amount of incompetence along the way.

I described today people who have had oil wells on their land and who have lived in poverty because somebody else got the money from their oil wells. They didn't get it, despite the fact that the government held their land in trust and promised to provide them their income from that land, whether it was from minerals, oil, grazing, agriculture, or another activity. For 140 years, American Indians have too often been cheated.

Well, a court case that has existed now for 15 years determined that the Federal Government had a responsibility and liability. Rather than have that court case continue for more years in the Federal courts, there was a negotiation late last year with Interior Secretary Ken Salazar and Cobell plaintiffs. They reached an agreement and the Federal judge gave Congress 30 days to provide the funding and approve the settlement. The Congress did not do that in 30 days. In fact, the deadline for the settlement has been extended now six times during which the Congress has not acted.

We have tried very hard to find ways to satisfy everybody here, but apparently that is not capable of being done today. I am profoundly disappointed in that. I think my colleague from Wyoming wishes he were one of the negotiators. He was not, of course. It was the Interior Secretary who and the plaintiffs who negotiated. The Congress simply is an evaluator of whether it wishes to dispense the funding for the settlement that was done. I was not a negotiator. Nobody in Congress was a negotiator.

The question isn't, by the way, whether Indians were cheated or whether they are owed money as a result of mismanagement and fraud over these decades. The Federal court has already determined that was the case. They found in favor of the plaintiffs, and then the case was appealed further by the Federal Government.

The question is whether we have a responsibility here. We do. The Federal court has already found that to be the case. The question is whether we will meet our responsibility. This negotiation that ensued with Cobell v. Salazar, as far as I am concerned, represented a sound and reasonable approach, and I believe we should fund and approve it and move forward.

The unanimous-consent request that I am going to offer includes Cobell v. Salazar and the authorized settlement in that case, as well as the approval and funding for the final settlement of claims from the Black farmers discrimination litigation that has been discussed at some length on the floor as well.

Mr. President, having said that, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 4994, and that the Senate proceed to its consideration; that the substitute amendment at the desk, which authorizes the settlement of Cobell, et al., v. Ken Salazar, et al., and to provide an appropriation for final settlement claims from In re Black Farmers Discrimination Litigation, be considered and agreed to, the bill, as amended, be read a third time, passed, and the motion to reconsider be laid upon the table, all without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. BARRASSO. Mr. President, reserving the right to object, I do support the Cobell lawsuit. I have great admiration for my colleague from North Dakota and the considerable work he has done as chairman of the committee. He has worked very effectively and passionately and he also worked with Secretary Salazar to get to a point where we can move forward. We are not quite there yet in terms of the policy or the payment issue. We are not quite there, but I will offer the following alternative to the proposal the chairman has presented to the Senate. It is along the lines of things I have been discussing with Secretary Salazar and the administration.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3754, which was introduced earlier today; that the bill be read the third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Is there objection?

Mr. DORGAN. I object.

The PRESIDING OFFICER. Objection is heard.

Is there objection to the original request?

Mr. BARRASSO. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, let me say again how extraordinarily disappointed I am. I have in my hand the proposal Senator BARRASSO offered to the Secretary of the Interior.

By the way, I don't accuse anybody of bad faith. The Senator from Wyoming is a friend of mine. I am enormously disappointed with him at this point. He has a right to be disappointed with me, if he wishes. Let me just say this. This negotiation ensued last November and December, resulting in a settlement. None of us here were part of that settlement—excuse me, we weren't a part of the negotiation that reached the settlement. That is not the role of the Senate, to be involved in a 100-person negotiation.

The lawsuit was a suit brought by plaintiffs against the Secretary of the Interior. The negotiations were negotiations with the Secretary of the Interior, who was the defendant in that suit. That is appropriate and the way it should be.

If we don't like what that negotiations developed and don't support the settlement and believe we can do better, then we should object. But then we don't get this done. That has happened six times this year. Over and over and over again, we have failed to act on this matter.

My colleague has five things he wants that are different than the settlement. Maybe they are better, I don't know. I don't have the foggiest idea. I said to him a while ago that I wish he would take yes for an answer because the response to his requests of the Interior Secretary was a letter from the Secretary saying he agreed with him and would do them. But my colleague wants them in legislative language. That changes the settlement and the negotiation.

It is 7:30 on a Thursday night in August, months and months and months after the settlement was sent to the Congress by a Federal judge, saying do this in 30 days. I just say it is very hard to get things done. Next, it will be somebody else who has four provisions or five provisions or who can write the settlement better or think it through more clearly. I don't know. I do know this. The people who have been cheated—and there are a lot of them and many of whom have died waiting for this settlement—are not going to get any benefits from this settlement until this Congress decides whether it is going to pass legislation dealing with the settlement.

It may be that any Member of the Congress can do a better job and write better provisions, except that we weren't the negotiators because we were not the defendants in the lawsuit. We have every right to say no, if that is the point. We have said no since last December. If that is the point, I suppose more plaintiffs will die. They will wait years and probably go back to Federal court. Maybe we can go another 10 years in Federal court, having lawyers earning money and Indians living on lands with oil wells 100 yards from their house and they get checks of 5 cents or 8 cents or maybe $3 as revenue from the wells. That is what has been happening for the last 130 years.

I understand why there is frustration. If I sound frustrated, think of the people I describe who have been cheated and have lived in poverty most of their lives because they have not had the opportunity to get income from the lands they owned. I don't understand it. I guess people see competing UCs, and wonder what is the result of what are called in the Senate competing UCs? Does anybody go home feeling good? Not me. We are either going to do this or not. If we don't like this settlement, let's not do it. I happen to like it; let's do it. My colleague, perhaps, wants to respond.

I will yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. BARRASSO. Mr. President, again, I have a great deal of respect for my colleague from North Dakota. He is compassionate and makes a compelling argument. We do need to settle the Cobell lawsuit. I ask the leaders to, over the next couple weeks, come together and allow for a very limited debate, possibly a few amendments on the floor, and then an up-or-down vote.

That is the sort of thing we need to do—in the light of day—with the Members of the Senate, not something that continues to be brought forth with the goal of getting a unanimous-consent agreement. We are not there.

I think the ideas I have brought forward are good. They come forward because those are the ideas I have had brought to me through various tribes from around the country who have concerns about the settlement. There have been large meetings of different tribes who have come out in support of these ideas that they have brought to me. I think it is very reasonable for the Senate, if we can arrange for a limited time for debate on the specifics and not be asked in a unanimous consent on the last evening before Members of this body have scattered home to their States, when they are no longer here. They have been told they are not going to vote again until the middle of September.

I think it is reasonable to ask the Senate to have a discussion on this and then a vote. If the Senate, in its wisdom, decides that is what they want and they want to pass this as written, then the will of the Senate has been worked. That is why I raise these concerns tonight.

With great admiration for the chairman, who has worked so well, in a bipartisan way on our committee, we have worked together on legislation on Indian affairs. He is chairman and I am vice chairman. I can understand his concerns and wanting to get this settled. I do too. I feel obligated to bring forth the concerns I have heard from across this country and bring them here.

That is the reason I object to the settlement tonight, and I would love to have our leaders work together to bring this forward to the floor for discussion, debate, and then an up-or-down vote.

I yield the floor.

Mr. DORGAN. Mr. President, let me describe the difficulty with the procedure my colleague described. We can't just bring something up for a vote, because if somebody here doesn't like it, they object. Then you have to file a cloture motion, and it takes 48 hours to get a cloture vote. Then you have 30 hours postcloture. That is what we run into. I agree with that; let's put the best idea up and have a vote on it. If you don't like the settlement and decide that somehow these plaintiffs are not worthy, despite the fact they have been bilked for 130 years, then vote no. But we can't even get a vote.

At any rate, I will wait and see if there is a better idea that will get votes in the Senate or are we going to continue every 30 days or so to say to this Federal judge that we understand a settlement was negotiated and reached on behalf of the United States of America, but we don't intend to vote for it?

I have another bill at the desk. Before I ask unanimous consent, I will describe it. In the piece of legislation we passed today, dealing with FMAP, and funding for teachers, and so on, there was a provision that was first described as a pay-for but actually scored as zero, which meant it was a pay-for that had zero impact. It does have an impact on American Indians, and I wanted to describe it briefly.

When the Economic Recovery Act was passed, we proposed that at least a small amount of money go to Indian reservations around this country because they had the highest rates of unemployment. So there was put in place a piece of legislation that provided an Indian guaranteed loan program account. There was $6.8 million remaining in that account that would support a substantial number of projects around the country—somewhere in the neighborhood of $80 million—that would put a lot of people to work—investing in new infrastructure and projects. That legislation—the so-called pay-for that is scored as zero in the bill passed today—in my judgment, we need to rescind that action because it had no impact on the legislation the Senate passed. But it will have a substantial impact on loan guarantees for these Indian reservations, most of which have the highest rates of unemployment in the country.

I have spoken to a good many people about the need to do this. Again, I have been on the phone to the Congressional Budget Office. They say that a zero score—as I introduced it today, it will not score. Therefore, I believe it is very important to do.

I ask unanimous consent that the Senate proceed to the immediate consideration of S. 3761, which is at the desk; that the bill be read the third time and passed; that the motion to reconsider be laid upon the table; and that any statements related to the bill be printed in the RECORD, as if read.

The PRESIDING OFFICER. Is there objection?

Mr. BARRASSO. Mr. President, reserving the right to object, this is something my colleagues have not had a chance to review. As a result, and not knowing the specific details and with colleagues now traveling back to their home States, on behalf of them, I do object.

The PRESIDING OFFICER. Objection is heard.

Mr. DORGAN. Mr. President, I understand my colleague from Wyoming suggests there are some here who may not be acquainted with this legislation. I have spoken to both Republicans and Democrats today, during the course of the proceedings, because I think it is very important. I think this is something we need to fix as well. I understand my colleague from Wyoming is objecting on behalf of others.

Let me make one other point on this. I have spent a fair amount of time talking to Senator KYL about this. He is on an airplane at the moment. He was not able to hear from the Congressional Budget Office before he left town. I do hope, even though there is an objection now—and to be fair to my colleague, he is objecting on behalf of other Senators with respect to this—that we can find a way to repair this because I think it is very important that we do so.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter dated August 5, 2010 from the CBO.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 5, 2010.

Hon. BYRON L. DORGAN,
Chairman, Committee on Indian Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you requested, CBO has reviewed a draft bill to ensure that amounts appropriated to the Bureau of Indian Affairs under the American Recovery and Reinvestment Act of 2009 remain available until September 30, 2010. The draft bill would repeal a provision in H.R. 1586, the FAA Air Transportation Modernization and Safety Improvement Act, as passed by the Senate on August 5, 2010, that would rescind certain unobligated balances from the Indian Guaranteed Loan Program Account.

CBO estimates that for the purpose of budget enforcement procedures in the Senate, passage of the draft bill would be considered to have no budgetary effect, because it would be amending legislation that had not yet cleared the Congress.

We also estimate that if the draft bill is passed by the Senate, passage of both bills by the House would lead to about $3 million more in direct spending than passage of just H.R. 1586 because the rescission in H.R. 1586 would be repealed. For the purpose of budget enforcement procedures in the House, that $3 million would affect the cost of whichever bill cleared the House later.

That $3 million cost would not count for the purpose of statutory pay-as-you-go procedures, because the funds affected were designated as an emergency requirement when originally appropriated.

I hope this information is helpful to you. If you wish further details on this estimate, we would be pleased to provide them. The CBO staff contact is Jeff LaFave who may be reached at 226–2860.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Mr. DORGAN. With that, I yield the floor.

TRIBUTE TO HERCULEZ GOMEZ

Mr. REID. Mr. President, today I come to the Senate floor to congratulate Herculez Gomez, a dedicated and disciplined soccer player from Las Vegas, who was one of 23 men to represent the country during the 2010 FIFA World Cup in South Africa as part of the U.S. Men's National Team. Herculez, who currently plays in Mexico's Professional First Division for Pachuca F.C., made the final cut after being selected from the 30-man provisional World Cup U.S. roster.

As the oldest of five children, Herculez was born in Los Angeles to Mexican-American parents and later moved to Las Vegas where he was raised. While attending Las Vegas High School, he joined the high school's soccer league, where he cultivated a passion that would launch his career in the MLS league, and later earn him an unexpected, but well-deserved slot to represent his home State of Nevada and the United States in the 2010 World Cup this past June.

Throughout the years Herculez has developed a very successful soccer career, playing for several teams both in the United States and Mexico. Despite having suffered several physical injuries, such as broken foots and torn ligaments, through perseverance and patience Herculez has made a name for himself as dedicated player and rising star. While playing with the Puebla F.C. in Mexico, he became the first American player to score the most number of goals for a foreign league, netting 10 goals in the 2010 Mexican season.

During the 2010 FIFA World Cup, Herculez played in three of the four U.S. men's team World Cup games, and started in one of them. Although the team's quest for our first World Cup ended in the round of 16, Herculez represented Nevada and his country brilliantly and I look forward to seeing bigger and better performances from this Las Vegan star.

FOR-PROFIT COLLEGES

Mr. DURBIN. Mr. President, lately it seems that there is nothing the Senate can agree on. We argue on partisan lines over every issue imaginable.

But I know of at least one issue that would bring every Member of the Senate to the floor in agreement: Pell grants.

This is a program designed to help poor students get the education they need to give themselves and their families a better future. Millions of Americans have seen the benefits of the Federal investment in Pell grants first hand.

Over the past 2 years, the Congress has provided significant increases in funding to the Pell grant program. We have raised the maximum Pell grant to an all time high of $5,550 and we set a course so the grants will continue to rise reaching almost $6,000 in 2017.

I have supported those increases. The recent expansion of the Pell grant program is essential for our economic recovery as Americans are returning to college to learn new skills.

But the investment does not come without a cost. To finance the higher Pell grant levels, we invested $17 billion from the Recovery Act and $36 billion from the recent reconciliation bill.

And we still have a shortfall this year caused by the tremendous new demand for Pell grants.

I have spoken before about my concern that increases to Federal student aid are diminished by the skyrocketing cost of higher education at many colleges and universities, but today I want to discuss a new threat to the Federal Pell grant program—in the form of for-profit colleges.

I am worried that a portion of the investment of taxpayer funding into higher education may be going to waste at the hands of for-profit colleges.

For-profit institutions of higher education have experienced a meteoric rise. Two decades ago, the phrases ''for-profit college'' or ''proprietary school'' would have conjured up images of the beauty school around the corner or the trade school down the street. Most of those schools were small mom-and-pop operations. Some were bad apples that wasted taxpayer money and some provided needed training to students with no other opportunities, but their impact was small.

That is no longer the case. Today, the largest recipient of Federal financial aid is a for-profit institution that enrolls over 450,000 students, many of those online.

Enrollment at for-profit colleges has grown by 225 percent over the past 10 years.

The 14 publicly traded companies in the industry enrolled 1.4 million students as of 2008.

Because of the high price of tuition and the active recruitment of low-income students, for-profit colleges receive a tremendous amount of Federal financial aid funding. For-profit colleges received $4.3 billion in Pell grants in 2009.

We also need to examine the funding that for-profit schools are receiving from other Federal sources.

Along with the billions of dollars in Pell grants and Federal student loans, the for-profit college industry also receives significant funding from the Department of Defense through tuition assistance and from the Department of Veterans Affairs through the G.I. bill.

Some for-profit institutions serve active-duty students and veterans well by offering flexible course schedules, distance learning, and course credit for military training.